

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

HILARIO FELIX,

Defendant.

CASE NO. 8:05CR162

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”), the Defendant’s objections thereto (Filing No. 356), the Defendant’s motion for variance (Filing No. 357), and the government’s sentencing statement (Filing No. 360). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Objections

The Defendant's objection to ¶¶ 23 and 31 (drug quantity) will be heard at sentencing. The government has the burden by a preponderance of the evidence.

The Defendant's objection to ¶ 21 (date of commencement of relevant conduct; relevant to criminal history and therefore the safety valve) is denied without prejudice to reassertion if necessary. More specifically, there is no need to address this argument unless other safety valve requirements have been met, including a satisfactory safety valve interview.

The Defendant's objections to ¶¶ 43 and 46 will be heard at sentencing. The government has the burden by a preponderance of the evidence.

The Defendant's objection to ¶ 32 (absence of an adjustment for the safety valve) will be heard at sentencing. The Defendant has the burden by a preponderance of the evidence.

Motion for Variance

The Defendant's motion for variance (Filing No. 357) will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's objections to ¶ 21 of the PSR is denied without prejudice;
2. The Defendant's remaining objections will be heard at sentencing;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
6. The Defendant's motion for variance (Filing No. 357) will be heard at sentencing.

DATED this 2nd day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge